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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Christopher Schultz,

Plaintiff,

vs.

HomeSmart International, LLC; Natosha  
Moore; and Eleazar Medrano,

Defendants.

**CASE NO. 2:24-cv-01694-JJT**

**NATOSHA MOORE’S ANSWER AND  
AFFIRMATIVE DEFENSES TO  
PLAINTIFF’S COMPLAINT**

Defendant Natosha Moore (“Moore”) submit this Answer and Affirmative  
Defenses as follows, using the same section designations as present in the Amended  
Complaint:

**INTRODUCTION**

1. Defendant states that Paragraph 1 of the Complaint does not state any allegations  
against Defendant and is a legal conclusion, and therefore no response is required, and to the  
extent a response is required, Defendant denies the allegation of any violations.

2. Denied.

3. Denied.

4. Denied.

5. Denied.

6. Denied.

1           7.     This paragraph states a legal conclusion, and therefore no response is required,  
2     and to the extent a response is required, Defendant lacks sufficient knowledge or information  
3     upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
4     and, therefore, leaves Plaintiff to his proof.

5           8.     This paragraph states a legal conclusion, and therefore no response is required,  
6     and to the extent a response is required, Defendant lacks sufficient knowledge or information  
7     upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
8     and, therefore, leaves Plaintiff to his proof.

9  
10                                   **JURISDICTION AND VENUE**

11           9.     This paragraph states a legal conclusion, and therefore no response is required,  
12     and to the extent a response is required, Defendant lacks sufficient knowledge or information  
13     upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
14     and, therefore, leaves Plaintiff to his proof.

15           10.    This paragraph states a legal conclusion, and therefore no response is required,  
16     and to the extent a response is required, Defendant lacks sufficient knowledge or information  
17     upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
18     and, therefore, leaves Plaintiff to his proof.

19           11.    Denied insofar as the allegations claims that there was any “wrongful conduct.”  
20     The remainder of the allegations of this paragraph state a legal conclusion, and therefore no  
21     response is required, and to the extent a response is required, Defendant lacks sufficient  
22     knowledge or information upon which to form a belief as to the truth of the allegations in this  
23     paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

24                                   **PARTIES**

25           12.    Defendant lacks sufficient knowledge or information upon which to form a belief  
26  
27  
28

1 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
2 Plaintiff to his proof.

3 13. Defendant lacks sufficient knowledge or information upon which to form a belief  
4 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
5 Plaintiff to his proof.  
6

7 14. Defendant lacks sufficient knowledge or information upon which to form a belief  
8 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
9 Plaintiff to his proof.

10 15. Defendant lacks sufficient knowledge or information upon which to form a belief  
11 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
12 Plaintiff to his proof.  
13

14 16. Defendant lacks sufficient knowledge or information upon which to form a belief  
15 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
16 Plaintiff to his proof.

17 17. Defendant lacks sufficient knowledge or information upon which to form a belief  
18 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
19 Plaintiff to his proof.  
20

21 18. Denied insofar as the paragraph alleges that Moore was employed by HomeSmart.

22 19. This paragraph states a legal conclusion, and therefore no response is required,  
23 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
24 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
25 and, therefore, leaves Plaintiff to his proof.

26 20. Denied insofar as the paragraph alleges that Medrano was employed by  
27 HomeSmart.  
28

1           21. This paragraph states a legal conclusion, and therefore no response is required,  
2 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
3 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
4 and, therefore, leaves Plaintiff to his proof.  
5

6                                   **TCPA BACKGROUND**

7           22. This paragraph states a legal conclusion, and therefore no response is required,  
8 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
9 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
10 and, therefore, leaves Plaintiff to his proof.

11           23. This paragraph states a legal conclusion, and therefore no response is required,  
12 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
13 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
14 and, therefore, leaves Plaintiff to his proof.  
15

16           24. This paragraph states a legal conclusion, and therefore no response is required,  
17 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
18 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
19 and, therefore, leaves Plaintiff to his proof.  
20

21           25. This paragraph states a legal conclusion, and therefore no response is required,  
22 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
23 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
24 and, therefore, leaves Plaintiff to his proof.

25           26. This paragraph states a legal conclusion, and therefore no response is required,  
26 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
27 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
28

1 and, therefore, leaves Plaintiff to his proof.

2 27. This paragraph states a legal conclusion, and therefore no response is required,  
3 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
4 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
5 and, therefore, leaves Plaintiff to his proof.  
6

7 28. This paragraph states a legal conclusion, and therefore no response is required,  
8 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
9 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
10 and, therefore, leaves Plaintiff to his proof.

11 29. This paragraph states a legal conclusion, and therefore no response is required,  
12 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
13 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
14 and, therefore, leaves Plaintiff to his proof.  
15

16 30. This paragraph states a legal conclusion, and therefore no response is required,  
17 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
18 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
19 and, therefore, leaves Plaintiff to his proof.  
20

21 31. This paragraph states a legal conclusion, and therefore no response is required,  
22 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
23 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
24 and, therefore, leaves Plaintiff to his proof.

25 32. This paragraph states a legal conclusion, and therefore no response is required,  
26 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
27 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
28

1 and, therefore, leaves Plaintiff to his proof.

2 33. This paragraph states a legal conclusion, and therefore no response is required,  
3 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
4 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
5 and, therefore, leaves Plaintiff to his proof.  
6

7 34. This paragraph states a legal conclusion, and therefore no response is required,  
8 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
9 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
10 and, therefore, leaves Plaintiff to his proof.

11 35. This paragraph states a legal conclusion, and therefore no response is required,  
12 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
13 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
14 and, therefore, leaves Plaintiff to his proof.  
15

16 36. This paragraph states a legal conclusion, and therefore no response is required,  
17 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
18 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
19 and, therefore, leaves Plaintiff to his proof.  
20

21 **HOMESMART BACKGROUND**

22 37. Defendant lacks sufficient knowledge or information upon which to form a belief  
23 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
24 Plaintiff to his proof.

25 38. Defendant lacks sufficient knowledge or information upon which to form a belief  
26 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
27 Plaintiff to his proof.  
28

1           39. Defendant lacks sufficient knowledge or information upon which to form a belief  
2 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
3 Plaintiff to his proof.

4           40. Defendant lacks sufficient knowledge or information upon which to form a belief  
5 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
6 Plaintiff to his proof.

7           41. Defendant lacks sufficient knowledge or information upon which to form a belief  
8 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
9 Plaintiff to his proof.

10           42. Defendant lacks sufficient knowledge or information upon which to form a belief  
11 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
12 Plaintiff to his proof.

13           43. Defendant lacks sufficient knowledge or information upon which to form a belief  
14 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
15 Plaintiff to his proof.

16           44. Defendant lacks sufficient knowledge or information upon which to form a belief  
17 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
18 Plaintiff to his proof.

19           45. Defendant lacks sufficient knowledge or information upon which to form a belief  
20 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
21 Plaintiff to his proof.

22           46. Defendant lacks sufficient knowledge or information upon which to form a belief  
23 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
24 Plaintiff to his proof.

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26  
27  
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1           47. Defendant lacks sufficient knowledge or information upon which to form a belief  
2 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
3 Plaintiff to his proof.

4           48. Defendant lacks sufficient knowledge or information upon which to form a belief  
5 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
6 Plaintiff to his proof.

7           49. Defendant lacks sufficient knowledge or information upon which to form a belief  
8 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
9 Plaintiff to his proof.

10           50. Defendant lacks sufficient knowledge or information upon which to form a belief  
11 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
12 Plaintiff to his proof.

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14  
15                           **PLAINTIFF'S FACTUAL ALLEGATIONS**

16           51. Defendant lacks sufficient knowledge or information upon which to form a belief  
17 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
18 Plaintiff to his proof.

19           52. Defendant lacks sufficient knowledge or information upon which to form a belief  
20 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
21 Plaintiff to his proof.

22           53. Defendant lacks sufficient knowledge or information upon which to form a belief  
23 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
24 Plaintiff to his proof.

25           54. Defendant lacks sufficient knowledge or information upon which to form a belief  
26 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
27  
28



1 Plaintiff to his proof.

2 55. Defendant lacks sufficient knowledge or information upon which to form a belief  
3 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
4 Plaintiff to his proof.

5 56. Defendant lacks sufficient knowledge or information upon which to form a belief  
6 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
7 Plaintiff to his proof.

8 57. Defendant lacks sufficient knowledge or information upon which to form a belief  
9 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
10 Plaintiff to his proof.

11 58. Defendant lacks sufficient knowledge or information upon which to form a belief  
12 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
13 Plaintiff to his proof.

14 59. Defendant lacks sufficient knowledge or information upon which to form a belief  
15 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
16 Plaintiff to his proof.

17 60. Defendant lacks sufficient knowledge or information upon which to form a belief  
18 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
19 Plaintiff to his proof.

20 61. Defendant lacks sufficient knowledge or information upon which to form a belief  
21 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
22 Plaintiff to his proof.

23 62. Defendant lacks sufficient knowledge or information upon which to form a belief  
24 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
25 Plaintiff to his proof.

1 Plaintiff to his proof.

2 63. Defendant lacks sufficient knowledge or information upon which to form a belief  
3 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
4 Plaintiff to his proof.

5 64. Defendant denies sending the text in question.

6 65. Defendant lacks sufficient knowledge or information upon which to form a belief  
7 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
8 Plaintiff to his proof.

9 66. Defendant denies sending the text in question.

10 67. Defendant lacks sufficient knowledge or information upon which to form a belief  
11 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
12 Plaintiff to his proof.

13 68. Defendant denies sending the texts in question.

14 69. Defendant lacks sufficient knowledge or information upon which to form a belief  
15 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
16 Plaintiff to his proof.

17 70. Defendant denies sending any automated or bulk messages.

18 71. Defendant lacks sufficient knowledge or information upon which to form a belief  
19 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
20 Plaintiff to his proof.

21 72. Defendant lacks sufficient knowledge or information upon which to form a belief  
22 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
23 Plaintiff to his proof.

24 73. Defendant lacks sufficient knowledge or information upon which to form a belief  
25  
26  
27  
28

1 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
2 Plaintiff to his proof.

3 74. Defendant lacks sufficient knowledge or information upon which to form a belief  
4 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
5 Plaintiff to his proof.  
6

7 75. Defendant lacks sufficient knowledge or information upon which to form a belief  
8 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
9 Plaintiff to his proof.

10 76. Defendant lacks sufficient knowledge or information upon which to form a belief  
11 as to the truth of the allegations in this paragraph of the Complaint and, therefore, leaves  
12 Plaintiff to his proof.  
13

14 77. Denied.

15 78. Denied.

16 79. Denied.

17 **DEFENDANTS' LIABILITY**

18 80. Denied.

19 81. Denied.

20 82. Denied.

21 83. Denied.

22 84. Denied.

23 **CLASS ACTION ALLEGATIONS**

24  
25 85. Defendant admit that Plaintiff purports to bring a class and denies that any class  
26 exists.  
27

28 86. This paragraph states a legal conclusion, and therefore no response is required,

1 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
2 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
3 and, therefore, leaves Plaintiff to his proof.

4 87. Denied.

5 88. Denied.

6 89. Denied.

7 90. Denied.

8 91. Denied.

9 92. Denied.

10 93. Denied.

11 94. Defendant denies that any class exists, as to the remainder Defendant lacks  
12 sufficient knowledge or information upon which to form a belief as to the truth of the  
13 allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

14 95. Defendant denies that any class exists, as to the remainder Defendant lacks  
15 sufficient knowledge or information upon which to form a belief as to the truth of the  
16 allegations in this paragraph of the Complaint and, therefore, leaves Plaintiff to his proof.

17 96. Denied.

18 97. Denied.

19 98. This paragraph states a legal conclusion, and therefore no response is required,  
20 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
21 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
22 and, therefore, leaves Plaintiff to his proof.

23 99. Denied.

24 100. There are no allegations between 100-110.

1           111. This paragraph states a legal conclusion, and therefore no response is required,  
2 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
3 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
4 and, therefore, leaves Plaintiff to his proof.

5           112. This paragraph states a legal conclusion, and therefore no response is required,  
6 and to the extent a response is required, Defendant lacks sufficient knowledge or information  
7 upon which to form a belief as to the truth of the allegations in this paragraph of the Complaint  
8 and, therefore, leaves Plaintiff to his proof.

9  
10           113. Denied.

11           114. Denied.

12           115. Denied.

13           116. Denied.

14           117. Denied.

15           118. Denied.

16  
17                           **[PLAINTIFF'S] PRAYER FOR RELIEF**

18           Defendant denies all wrongdoing and liability, denies that this lawsuit is  
19 appropriate for class certification, and thus denies that Plaintiff is entitled to any relief,  
20 including the relief sought in his Complaint.

21  
22                           **AFFIRMATIVE DEFENSES**

23           By alleging the defenses herein, Defendant intends no alteration of any burden of  
24 proof that otherwise exists with regard to the claims in the Complaint. All defenses are  
25 pled in the alternative and do not constitute an admission either of liability or as to whether  
26 Plaintiff is entitled to any relief, which is denied. Defendant reserves the right to amend,  
27  
28

1 modify and/or supplement these Affirmative Defenses.

2 **First Affirmative Defense**

3 Plaintiff and/or putative class members lacks standing to assert the claim asserted  
4 in the Complaint because Plaintiff has not been harmed or suffered “injury in fact” by the  
5 alleged conduct at issue regardless of whether Plaintiff and/or the putative class members  
6 seek only statutory damages. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).  
7 It would appear self-evident that the recipient of a cell phone call would first be required  
8 to demonstrate cognizable injury; that is, that he was both (1) charged, and (2) paid, for  
9 the call. *See* 47 U.S.C. §227(b)(1)(A)(iii).  
10  
11

12 **Second Affirmative Defense**

13 Defendant has established and implemented, with due care, reasonable practices,  
14 training, and procedures to effectively prevent telephone solicitations and/or calls in  
15 violation of the TCPA and/or in violation of the regulations prescribed under the TCPA.  
16

17 **Third Affirmative Defense**

18 Plaintiff’s and/or putative class members’ claims are barred in or in whole by the  
19 applicable statutes of limitations.  
20

21 **Fourth Affirmative Defense**

22 Plaintiff’s and/or putative class members’ claims are barred by the doctrine of  
23 unclean hands and are estopped from claiming any damages, or have otherwise waived  
24 any such claims or damages, to the extent Plaintiff and/or putative class members have  
25 attempted to induce Defendant to violate the TCPA by specifically requesting that  
26 Defendant contact Plaintiff and/or putative class members, and therefore assisted,  
27  
28

1 directed, ordered, approved and/or ratified Defendant's conduct by specifically requesting  
2 that Defendant contact Plaintiff and/or putative class members and Defendant relied on  
3 Plaintiff's and/or putative class members' actions to its detriment.  
4

5 **Fifth Affirmative Defense**

6 Plaintiff's and putative class members' claims are barred, in whole or in part,  
7 because at all times Plaintiff and/or putative class members provided, invited or gave  
8 express or implied consent, invitation, or permission to Defendant's conduct as described  
9 in the Complaint. The Complaint and each cause of action contained therein are barred  
10 as a matter of law.  
11

12 **Sixth Affirmative Defense**

13 Plaintiff and/or putative class members, by their own actions and conduct, have  
14 failed to exercise reasonable care and diligence on their own behalf, thereby causing or  
15 contributing to their alleged injury and damages, if any. Plaintiff's and/or putative class  
16 members' recovery therefore must be reduced or eliminated altogether by the proportion  
17 of damages caused by their own acts and conduct.  
18

19 **Seventh Affirmative Defense**

20 Plaintiff and/or the putative class members have failed to name all necessary and  
21 indispensable parties to this action.  
22

23 **Eighth Affirmative Defense**

24 No act or omission of Defendant was a substantial factor in bringing about the  
25 damages alleged, nor was any act or omission of Defendant a contributing cause thereof.  
26 Any alleged acts or omissions of Defendant were superseded by the acts or omissions of  
27  
28

1 others, including Plaintiff and/or the putative class members, or other third parties named  
2 or not named as in the Complaint, which were the independent, intervening and proximate  
3 cause of the damage or loss allegedly sustained by Plaintiff and/or putative class members.  
4 Plaintiff's and/or putative class members' claims are barred, in whole or in part, because  
5 Plaintiff's and/or putative class members' injuries, if any, were caused and/or contributed  
6 to, in whole or in part, by the actions of parties other than Defendant or for whom  
7 Defendant has no control and/or who may have called Plaintiff and/or putative class  
8 members identifying Defendant's services, goods or products without Defendant's  
9 consent or knowledge.  
10  
11

12 **Ninth Affirmative Defense**

13 Rights and causes of action arising under the TCPA are not assignable. Any  
14 proposed or putative assignment of such rights and causes of action to Plaintiff and/or  
15 putative class members are therefore invalid, and Plaintiff and/or putative class members  
16 lacks standing to sue or recover thereon.  
17

18 **Tenth Affirmative Defense**

19 Violations of the technical requirements of the TCPA are not enforceable by  
20 private litigants, and Plaintiff and/or putative class members lacks standing to sue or  
21 recover based thereon.  
22

23 **Eleventh Affirmative Defense**

24 Where, as here, the parties had an "established business relationship," the TCPA's  
25 prohibitions do not apply, and Defendant's action cannot – as a matter of law – violate the  
26 TCPA. 47 C.F.R. § 64.1200(a)(2)(iv).  
27  
28



1 **Twelfth Affirmative Defense**

2 Plaintiff's and/or putative class members' claims against Defendant are barred, in  
3 whole or in part, by the TCPA's "safe harbor provision," as provided for by 47 C.F.R. §  
4 64.1200(c)(2).  
5

6 **Thirteenth Affirmative Defense**

7 Plaintiff and putative class members cannot hold Defendant liable for alleged  
8 violations of the TCPA for the alleged conduct of a third party, as Defendant is not  
9 vicariously liable for such conduct. Any damage, loss, or liability sustained by Plaintiff  
10 and/or putative class members must be reduced, diminished, and/or barred in proportion  
11 to the wrongful conduct or negligent conduct of persons or entities other than Defendant,  
12 including third parties, under the principles of equitable allocation, recoupment, set-off,  
13 proportionate responsibility, and/or comparative/contributory fault.  
14  
15

16 **Fourteenth Affirmative Defense**

17 To the extent Defendant violated the law – which it denies – any such violations  
18 were neither intentional nor willful, and were due to bona fide errors despite procedures  
19 and/or policies designed to prevent such errors.  
20

21 **Fifteenth Affirmative Defense**

22 Plaintiff and/or putative class members lacks standing to bring a claim on behalf  
23 of any putative class members outside the specific calling campaign that he claims to be  
24 a part of, and lacks standing to bring a claim on behalf of any putative class members  
25 outside the Commonwealth of Massachusetts.  
26

27 ///  
28

1 **Sixteenth Affirmative Defense**

2 Plaintiff's and putative class members' claims are barred to the extent Plaintiff  
3 and/or putative class members were not charged for the call(s) at issue pursuant to 47  
4 U.S.C. § 227(b)(1)(A)(iii).  
5

6 **Seventeenth Affirmative Defense**

7 The claims asserted in the Complaint are barred because Defendant has  
8 established and implemented, with due care, reasonable practices, policies and/or  
9 procedures designed to prevent violations of the TCPA.  
10

11 **Eighteenth Affirmative Defense**

12 To the extent the TCPA is applied against Defendant in this case to impose liability  
13 that would be grossly disproportional to any actual harm allegedly caused by the activity  
14 in question, the TCPA violates the Due Process Clause of the Fifth Amendment to the  
15 United States Constitution, the Due Process Clause of the Fourteenth Amendment of the  
16 United States Constitution, and the Eighth Amendment to the United States Constitution,  
17 which prohibits excessive fines.  
18  
19

20 **Nineteenth Affirmative Defense**

21 Plaintiff's and putative class members' claims are barred to the extent they are  
22 subject to any agreement prohibiting such claims, including agreements containing a class  
23 action waiver or otherwise requiring arbitration of the claims.  
24

25 **Twentieth Affirmative Defense**

26 The Complaint, in whole or in part, fails to state a claim upon which relief can be  
27 granted.  
28

1 **Twenty-First Affirmative Defense**

2 Plaintiff's and/or putative class members' claims are barred, in whole or in part, by  
3 the doctrine of *de minimis* harm because the actual harm allegedly suffered by Plaintiff  
4 and/or putative class members is negligible.  
5

6 **Twenty-Second Affirmative Defense**

7 Plaintiff's and/or putative class members' claims are barred, in whole or in part,  
8 because the TCPA violates the First Amendment to the U.S. Constitution, on its face and  
9 as applied, as an overly broad prohibition on free speech.  
10

11 **Twenty-Third Affirmative Defense**

12 Plaintiff and/or the putative class members cannot carry their burden of showing  
13 that any action of Defendant was willful or knowing. Moreover, Plaintiff and/or putative  
14 class members are not entitled to treble damages because Defendant did not act willfully  
15 or knowingly.  
16

17 **Twenty-Fourth Affirmative Defense**

18 The Complaint, and each claim asserted therein, is barred, in whole or in part,  
19 because Plaintiff and/or putative class members are not within the "zone of interests" of  
20 persons and entities that the TCPA was created to affect.  
21

22 **Twenty-Fifth Affirmative Defense**

23 At all times relevant to the matters alleged in the Complaint, Defendant acted in  
24 good faith, reasonably and without any actual or constructive knowledge of any alleged  
25 breach of any legal duty owed to Plaintiff, or any other alleged wrong done to Plaintiff  
26 and/or putative class members. The acts and conduct of Defendant were fair and  
27  
28

1 reasonable and were performed in good faith based on all the relevant facts known to  
2 Defendant. Defendant acted with a good faith cause and/or a legitimate business reason  
3 to act as it did and did not directly or indirectly perform any acts that would constitute a  
4 violation of Plaintiff's and/or putative class members' rights. Consequently, Plaintiff and  
5 putative class members are not entitled to any damages whatsoever.  
6

7 **Twenty-Sixth Affirmative Defense**

8 Defendant denies that class treatment is warranted and/or satisfied Fed. R. Civ. P.  
9 23, and further incorporates each of the foregoing Affirmative Defenses to any other  
10 putative class members, which would require a burdensome and time consuming,  
11 individualized inquiry for each such plaintiff.  
12

13 **Reservation of Rights to Allege Other Affirmative Defenses**

14 Defendant is entitled to the benefit of all defenses and presumptions contained in,  
15 or arising from, any rule of law or statute governing the claims asserted in this action.  
16 Moreover, certain additional defenses to the Complaint and to the asserted claims for relief  
17 stated therein may be available to Defendant. These additional defenses may require  
18 discovery before than be properly alleged. Defendant intends to rely on any other defenses  
19 that may become available or apparent during the course of discovery or its investigation  
20 of Plaintiff's and/or putative class members' claims and thus reserves its right to amend  
21 its Answer and Affirmative Defenses to include such defenses to Plaintiff's and/or  
22 putative class members' claims.  
23  
24  
25

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Defendant prays for judgment against Plaintiff as follows:  
28

1. That Plaintiff take nothing by virtue of his Complaint;
2. That Plaintiff's Complaint be dismissed with prejudice;
3. That judgement enter in favor of Defendant;
4. For costs and disbursements incurred herein, including attorneys' fees and costs; and
5. For such other relief as the Court may deem appropriate.

**REQUEST FOR JURY TRIAL**

Defendant demands a jury trial on all issues so triable.

Dated this 14<sup>th</sup> day of October, 2024.

**GORDON REES SCULLY  
MANSUKHANI, LLP**

By: /s/ Lori N. Brown  
Lori N. Brown  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on October 14, 2024, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing thereby transmitting a notice of electronic filing to all counsel and parties of record.

/s/ Jessica C. Gerblick